

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE MAY 14, 2009

AMENDED IN SENATE APRIL 21, 2009

**SENATE BILL**

**No. 258**

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**Introduced by Senator Oropeza**

February 24, 2009

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~~An act to add Sections 7058.1, 7058.2, and 7138.2 to the Business and Professions Code, relating to contractors~~  
*An act to amend Section 20111.5 of, and to add Section 20111.6 to, the Public Contract Code, relating to public contracts.*

LEGISLATIVE COUNSEL'S DIGEST

SB 258, as amended, Oropeza. ~~Contractors: public works. Public contracts: school districts: bidding requirements.~~

*Under existing law, the governing board of a school district may require each prospective bidder for certain contracts involving an expenditure of more than \$50,000 to submit a standardized questionnaire and financial statement, including information relating to financial ability and experience in performing public works. Existing law further requires a school district requiring the above information to adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, as specified.*

*This bill would require the questionnaire and the uniform system of rating bidders described above to contain, at a minimum, substantially similar information, questions, and requirements as that of the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations for public entities, as specified.*

*The bill would also require the governing board of a school district, for contracts involving projects valued at \$1,000,000 or more, if the district chooses not to follow specified bidding procedures for school districts, to use other procedures for bidding applicable to public entities, as prescribed. By imposing new duties on local officials, the bill would create a state-mandated local program.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

~~Existing law, the Contractors' State License Law, provides for the licensure and regulation of contractors by the Contractors' State License Board. Existing law authorizes the board to set application, licensure, and renewal fees, among others, not to exceed certain limits, and provides for the deposit of those fees in the Contractors' License Fund, a continuously appropriated fund. Existing law requires the awarding authority to determine the license classification necessary to bid and perform on public works contracts, as defined.~~

~~This bill would, on and after January 1, 2012, prohibit a contractor from performing work as a contractor or subcontractor on a public work, as defined, contracted for by the state or a state agency unless he or she has obtained a public works certification from a state certifying agency to be determined by the Legislature. The bill would require the certifying agency to establish and validate standards of competency through a prequalification certification system by January 1, 2011. The certifying agency would also be authorized to deny or revoke a public works certification under specified circumstances. The bill would require the agency to charge each applicant a fee in an amount sufficient to pay for the costs of administering the prequalification and certification, not to exceed certain amounts, as specified. The bill would also create the Public Works Certification Fund within the State Treasury in which fee moneys would be deposited and used only for these purposes upon appropriation by the Legislature.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: ~~no~~-yes.

*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 20111.5 of the Public Contract Code is*  
2     *amended to read:*

3     20111.5. (a) The governing board of the district may require  
4     that each prospective bidder for a contract, as described under  
5     Section 20111, complete and submit to the district a standardized  
6     questionnaire and financial statement in a form specified by the  
7     district, including a complete statement of the prospective bidder's  
8     financial ability and experience in performing public works. The  
9     questionnaire and financial statement shall be verified under oath  
10    by the bidder in the manner in which civil pleadings in civil actions  
11    are verified. The questionnaires and financial statements shall not  
12    be public records and shall not be open to public inspection.

13    (b) Any school district requiring prospective bidders to complete  
14    and submit questionnaires and financial statements, as described  
15    in subdivision (a), shall adopt and apply a uniform system of rating  
16    bidders on the basis of the completed questionnaires and financial  
17    statements, in order to determine the size of the contracts upon  
18    which each bidder shall be deemed qualified to bid.

19    (c) *The questionnaire described in subdivision (a), and the*  
20    *uniform system of rating bidders described in subdivision (b), shall*  
21    *contain, at a minimum, substantially similar information, questions,*  
22    *and requirements as that of the standardized questionnaire and*  
23    *model guidelines for rating bidders developed by the Department*  
24    *of Industrial Relations pursuant to subdivision (a) of Section 20101.*

25    ~~(e)~~

26    (d) Each prospective bidder on any contract described under  
27    Section 20111 shall be furnished by the school district letting the  
28    contract with a standardized proposal form that, when completed  
29    and executed, shall be submitted as his or her bid. Bids not  
30    presented on the forms so furnished shall be disregarded.

31    ~~(d)~~

32    (e) A proposal form required pursuant to subdivision~~(e)~~ (d)  
33    shall not be accepted from any person or other entity who is  
34    required to submit a completed questionnaire and financial  
35    statement for prequalification pursuant to subdivision (a), but has  
36    not done so at least five days prior to the date fixed for the public  
37    opening of sealed bids or has not been prequalified, pursuant to  
38    subdivision (b), for at least one day prior to that date.

1 (e)

2 (f) Notwithstanding subdivision ~~(d)~~ (e), any school district may  
3 establish a process for prequalifying prospective bidders pursuant  
4 to this section on a quarterly basis and may authorize that  
5 prequalification to be considered valid for up to one calendar year  
6 following the date of initial prequalification.

7 *SEC. 2. Section 20111.6 is added to the Public Contract Code,*  
8 *to read:*

9 *20111.6. (a) This section shall apply only to public projects,*  
10 *as defined in subdivision (c) of Section 22002, involving an*  
11 *expenditure of one million dollars (\$1,000,000) or more.*

12 *(b) If the governing board of the district does not utilize the*  
13 *procedures set forth in Section 20111.5 for a contract meeting the*  
14 *criteria of subdivision (a), then the governing board of the district*  
15 *shall use the procedures for qualification of bidders set forth in*  
16 *Section 20101.*

17 *SEC. 3. If the Commission on State Mandates determines that*  
18 *this act contains costs mandated by the state, reimbursement to*  
19 *local agencies and school districts for those costs shall be made*  
20 *pursuant to Part 7 (commencing with Section 17500) of Division*  
21 *4 of Title 2 of the Government Code.*

22 ~~SECTION 1. Section 7058.1 is added to the Business and~~  
23 ~~Professions Code, to read:~~

24 ~~7058.1. (a) To promote the safety of California's publicly~~  
25 ~~owned facilities and to ensure the best use of California tax dollars~~  
26 ~~it is the intent of the Legislature to certify that only the most~~  
27 ~~qualified contractors perform on public works projects.~~

28 ~~(b) On and after January 1, 2012, a contractor shall not perform~~  
29 ~~work as a contractor or subcontractor on a public work that is~~  
30 ~~contracted for by the state or a state agency or any other public~~  
31 ~~agency unless the contractor has obtained a public works~~  
32 ~~certification from a state certifying agency to be determined by~~  
33 ~~the Legislature. To obtain a public works certification, the qualifier~~  
34 ~~for a license shall submit to the certifying agency the public works~~  
35 ~~certification prequalification document developed pursuant to~~  
36 ~~Section 7058.2 and administered by the certifying agency and~~  
37 ~~receive certification from the certifying agency.~~

38 ~~(c) This section shall not be construed to affect the requirements~~  
39 ~~imposed by subdivision (b) of Section 7059.~~

1     ~~(d) This section shall not be construed to restrict the state or~~  
2     ~~any other public agency from imposing additional requirements~~  
3     ~~on contractors in awarding public works contracts.~~

4     ~~(e) The certifying agency may deny or revoke a public works~~  
5     ~~certification if the contractor fails or has failed to comply with the~~  
6     ~~laws or regulations applicable to public works or if the contractor~~  
7     ~~commits or has committed any of the acts constituting grounds for~~  
8     ~~denial of a license under Section 480. Procedures upon denial of~~  
9     ~~a public works certification shall be conducted in accordance with~~  
10    ~~Section 485. Procedures for revocation of a public works~~  
11    ~~certification shall be conducted in accordance with Chapter 5~~  
12    ~~(commencing with Section 11500) of Part 1 of Division 3 of Title~~  
13    ~~2 of the Government Code.~~

14    ~~(f) This section shall not be construed as expanding the~~  
15    ~~enforcement authority of the agency.~~

16    ~~(g) “Public agency,” for purposes of this chapter, means a city,~~  
17    ~~county, city and county, including chartered cities and chartered~~  
18    ~~counties, the University of California and any special district, and~~  
19    ~~any other political subdivision of the state for the local performance~~  
20    ~~of governmental or proprietary functions within limited boundaries.~~  
21    ~~“Public agency” also includes a nonprofit transit corporation wholly~~  
22    ~~owned by a public agency and formed to carry out the purposes~~  
23    ~~of the public agency.~~

24    ~~(h) For purposes of this section, “public work” means any work~~  
25    ~~that is subject to the requirements of Chapter 1 (commencing with~~  
26    ~~Section 1720) of Part 7 of Division 2 of the Labor Code.~~

27    ~~SEC. 2. Section 7058.2 is added to the Business and Professions~~  
28    ~~Code, to read:~~

29    ~~7058.2. (a) The certifying agency shall do all of the following:~~

30    ~~(1) On or before January 1, 2011, establish and validate~~  
31    ~~minimum standards for the competency and prequalification of all~~  
32    ~~contractors performing work on public works projects through a~~  
33    ~~system of prequalification certification pursuant to Section 7058.1.~~

34    ~~(2) On or before March 1, 2010, establish advisory committees~~  
35    ~~and panels as necessary to carry out the functions under this~~  
36    ~~section. There shall be contractor representation from both the~~  
37    ~~general contractor community and the subcontractor community~~  
38    ~~with at least one representative from the following organizations~~  
39    ~~on all committees or panels: Associated General Contractors,~~  
40    ~~Construction Employers Association, California Legislative~~

1 Conference of the Plumbing, Heating and Piping Industry, and the  
2 National Electrical Contractors Association. In addition there shall  
3 be at least one representative from organized labor on any  
4 committee or panel. This labor position shall be the designee of  
5 the California Building and Construction Trades Council.

6 ~~(3) On or before January 1, 2011, establish fees necessary to~~  
7 ~~implement this section and charge each applicant for a public works~~  
8 ~~certification the determined fee.~~

9 ~~(4) On or before July 1, 2011, establish and adopt regulations~~  
10 ~~to enforce this section.~~

11 ~~(5) Issue certification cards to contractors who have been~~  
12 ~~prequalified and certified pursuant to this section.~~

13 ~~(6) Deposit fees collected pursuant to paragraph (3) in the Public~~  
14 ~~Works Certification Fund.~~

15 ~~(7) Make information on contractors certified pursuant to this~~  
16 ~~section publicly available.~~

17 ~~(b) The public works prequalification certification shall be~~  
18 ~~developed according to professionally accepted principles for~~  
19 ~~prequalification and should adhere as closely as possible to the~~  
20 ~~guidelines set forth in Section 20101 of the Public Contract Code.~~  
21 ~~The certification shall not be based on a per-project basis and shall~~  
22 ~~be based on a per-applicant basis.~~

23 ~~SEC. 3. Section 7138.2 is added to the Business and Professions~~  
24 ~~Code, to read:~~

25 ~~7138.2. (a) In addition to the fee schedule specified in Section~~  
26 ~~7137, the application fee for a public works certification~~  
27 ~~examination, until December 31, 2014, shall not be more than~~  
28 ~~sixty-five dollars (\$65), and on and after January 1, 2015, shall~~  
29 ~~not be more than one hundred twenty-five dollars (\$125). Sections~~  
30 ~~7138 and 7138.1 shall apply to this section. Those fees shall be~~  
31 ~~deposited in the Public Works Certification Fund.~~

32 ~~(b) The Public Works Certification Fund is hereby created as a~~  
33 ~~special account within the State Treasury. Upon appropriation by~~  
34 ~~the Legislature to the certifying agency, money in the fund may~~  
35 ~~be used for the costs of the agency to prequalify and certify~~  
36 ~~contractors and subcontractors pursuant to Section 7058.1, and to~~  
37 ~~pay for the costs of issuing certification cards under Section 7058.2,~~  
38 ~~and shall not be used for any other purpose.~~

1     ~~(e) The fund shall consist of the fees collected pursuant to~~  
2     ~~paragraph (3) of subdivision (a) of Section 7058.2 and subdivision~~  
3     ~~(a) of this section.~~

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